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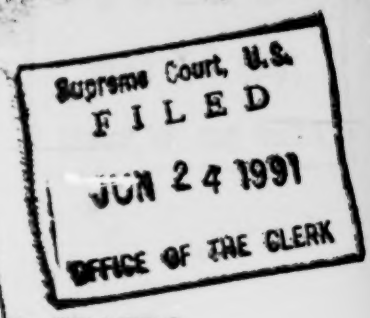

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

E. J. McMANUS AND
ALL OTHERS SIMILARLY SITUATED,

Petitioners,

v.

STATE OF IOWA, IOWA DEPARTMENT OF
REVENUE AND FINANCE AND GERALD BAIR,

Respondents

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT**

DAVID P. McMANUS
GLASSON, GROVE, SOLE
& McMANUS

118 Third Avenue SE
Suite 206
Cedar Rapids, IA 52401
(319) 366-4313
Attorney for Petitioner

GERALD A. KUEHN
MARCIA MASON
Assistant Attorneys
General
Hoover State Office
Building
Des Moines, IA 50319
(515) 281-5846
Attorney for Respondents

Supreme Court, U.S.
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QUESTIONS PRESENTED

1. Does the Tax Injunction Act Title 28 U.S.C.A. §1341 bar suits in federal court for tax refund claims of federal retirees who maintain the State of Iowa discriminated in the taxation of their retirement income contrary to **Davis v. Michigan**, 489 U.S. _____, 109 S. Ct. 1500, 103 L Ed 2d 891?

2. Are these same claims barred under the Eleventh Amendment to the United States Constitution? Should **Hans v. Louisiana,** 134 U.S. 1, 10 S C 504 33 L Ed 842 (1890) be overruled?

3. Are these same claims barred under the principles of comity?

PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings below are all identified in the caption.

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The opinion of the United States Court of Appeals for the Eighth Circuit in this case was issued April 3, 1991, but is unreported. No petitions for rehearing were filed. The opinion of the District Court was also unreported. The opinions of the Eighth Circuit and the District Court are reprinted in the Appendix.

JURISDICTION

The Court has jurisdiction to issue a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit under 28 U.S.C.A. §1254. The Eighth Circuit's opinion having been entered April 3, 1991 means this petition is timely under this court's Rule 13 and 28 U.S.C.A. §2101(b).

STATUTES

Title 28 U.S.C.A. §1341, the Tax Injunction Act, provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

Title 42 U.S.C.A. §2000d-7(a)(1) states:

> A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal Court for a violation of [statutes relating to Rehabilitation, Education, Age Discrimination and Civil Rights] or the provisions of **any other Federal statute prohibiting discrimination** by recipients of Federal financial assistance. [emphasis added]

Title 4 U.S.C.A. §111 provides:

> The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having

> jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.

Title 28 U.S.C.A. §1343(3) provides in part:

> . . . The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> . . . .
>
> (3) To redress the deprivation, under color of any state law, statute . . . . of any right, privilege or immunity secured by the Constitution . . . or by any Act of Congress providing for equal rights of citizens . . .

The following Iowa Statutes and Administrative Rule are involved, but are of such length they are set out in the Appendix: §§421.10, 422.28, 422.29(1) & (2), 422.73(2), 17A.2(9), 17A.19, and IAC 701-7.8(17A).

CONSTITUTIONAL PROVISIONS

The Eleventh Amendment to the United States Constitution provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

STATEMENT OF THE CASE

On November 28, 1989, E. J. McManus filed a class action in the United States District Court, Northern District of Iowa, Cedar Rapids Division, seeking refunds of income taxes paid which he claimed had been unlawfully taken from him by the State of Iowa contrary to the "Public Salary Tax Act", 4 U.S.C.A. §111, as interpreted by **Davis v. Michigan**, 489 U.S. _____, 109 S. Ct. 1500, 103 L Ed 2d 891.

The State of Iowa denied the Petition and moved to dismiss saying these claims were barred under the Eleventh Amendment, the Tax Injunction Act, and principles of comity.

June 14, 1990 the District Court from the District of Nebraska, sitting by designation granted the State's Motion to Dismiss on the sole ground the Court lacked jurisdiction under the Tax Injunction Act.

June 29, 1990, McManus appealed this decision to the Eighth Circuit Court of Appeals which issued a decision April 3, 1991 affirming the trial court's dismissal of the action under the Tax Injunction Act without opinion saying the case would have no precedential value under Eighth Circuit Rule 47B.

Jurisdiction in the trial court is based on 28 U.S.C.A.§ 1331 and that of the Court of Appeals is based on 28 U.S.C.A. §1291.

REASONS FOR GRANTING THE WRIT

Tax Injunction Act

The Tax Injunction Act bars suits in federal court over taxes under State law " . . . where a plain, speedy and efficient remedy may be had in the courts of such state." Under Iowa practice, a taxpayer must file a "protest" with the Iowa Department of Revenue to begin his odyssey for the refund of income taxes. §422.29(1), 422.73(2), 17A.19, IAC(Iowa Administrative Code)701-7.8(17A). McManus filed his protest with the Department, but it refused to either admit or deny the refund claim saying it was awaiting more definitive rulings from this court under cases it thought presented similar issues.

It also argued below it wished to avoid litigating at once the 30,000 refund claims pending before it, its failure to even deny the refund claims was to save the taxpayers the attorney fees in invoking their right of judicial review under §17A.19 of the Iowa Code, and that McManus should await the outcome of what it characterizes as a "test case" (**Hagge v. Iowa Dept. of Revenue & Finance**, Docket No. 90-20-2-0216) where members of the National Association of Retired Federal Employees are seeking refunds at the Department level of income taxes for the same reasons. Despite this protest having been brought in November, 1989, the Department has, to this date, failed to even issue a denial.

If the Department's motives are true, then one would think it would deny the refund claims in the **Hagge** "test case" as the Department would

then only be litigating the several taxpayers' claims there, those taxpayers would alone bear the expense of such litigation and a quicker proceeding would be begun leading to a decision from the Iowa Supreme Court.[1]

However, the Department's behavior is merely a strategy of indecision to "hold the taxpayers at bay" for if it granted one refund claim it would have to grant all the others. If it denies one, it more clearly invokes the thirty day time period for starting judicial review under §17A.19 which would lead to an earlier decision than the Department wishes since it would take the risk of

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[1]The Department argued below §17A.19's requirement for "final agency action" before judicial review may be had is met by §17A.2(9)'s definition of "agency action" which includes a "failure" to act but §17A.19 runs the thirty day period for beginning judicial review from "final" agency action and doesn't have a provision similar to Iowa State Tort Claims Act, §25A.5, giving the state six months to make an administrative decision, which more clearly contemplates a failure to act.

having to refund millions of dollars in taxes to the retirees.

At the Department (or administrative) level, Iowa appears to prevent class action litigation under **Quaker Oats Co. v. Cedar Rapids Human Rights Com'n.**, 268 N.W. 2d 862 (Iowa 1970) @ p. 867, rt. col. [8].

The Iowa Statutes themselves are confusing on the taxpayer's remedy for refunds. Iowa's Chapter 17A is its administrative procedure act and §17A.19, ostensibly including the Department of Revenue, requires parties to exhaust their administrative remedies before invoking judicial review. I.A.C. §701-7.8(17A), cited above, was evidently issued by the Department under this chapter.

However, long before the existence of Chapter 17A, and always remaining in effect

alongside that chapter, are the provisions of Chapter 422 of the Iowa Code which also govern tax refunds. §422.73(2) requires a tax be refunded if it is not due under that chapter, implying only state standards are available for refunds instead of the Public Salary Tax Act at issue here on the merits. §422.29(1) also expressly grants judicial review under the Iowa Administrative Procedure Act (implying the language of Chapter 17A was not sufficient to do this) which refers to §422.28 which in turn requires a tax be **assessed** before a taxpayer has remedies. §422.29(2) requires a taxpayer post a bond in double the amount of the tax which makes no sense when a taxpayer seeks a refund.

The Department argued below §421.10 gave McManus a plain, speedy and efficient remedy where it says the appeal period for a revision of

"assessment . . . under . . . 422.28 . . . " applies to appeals from Department action ". . . **denying** refund claims . . . " The problem with this statute is the Department refuses to either admit or deny refund claims preventing §421.10 from operating.

Further Exceptions Under the Tax Injunction Act

Besides the express exceptions for plain, speedy and efficient remedy, there are other exceptions to the Tax Injunction Act. There is the "federal instrumentality" doctrine and the "real and significant interest" the United States may have in the claiming party. There is also an independent jurisdictional basis in 28 U.S.C. §1343(3), giving district courts jurisdiction over civil actions to redress the deprivation of rights granted by any act of Congress providing for equal rights of citizens. Here McManus argues that because the Public Salary Tax Act allows states to

tax federal employees as long as they don't "discriminate" then his claims fall within §1343(3) describing statutes providing for "equal rights" of citizens.

The last United States Supreme Court decision McManus finds discussing many of these issues is **Moe v. Confederated Salish & Kootenai Tribes**, 425 U.S. 463, 96 S. Ct. 1634, 48 L Ed 2d 96 (1976). There the court allowed an Indian tribe to sue the State of Montana over taxes on cigarettes and motor vehicles under a substantive theory akin to the federal instrumentality doctrine despite the Tax Injunction Act.

In **Moe** the Supreme Court didn't believe the theory of "real and significant interest" was sufficient to get around the Tax Injunction Act (adopted by trial court, 392 F. Supp. @ 1303) so it examined 28 U.S.C.A. §1362 which gave the

federal courts jurisdiction over "all civil actions" brought by Indian tribes. But because **Moe** believed "all civil actions" too broad to be an exception, 425 U.S. @ 472, 96 S. Ct. @1641 (lft. col.), it then examined the legislative history but finding this " . . . hardly an unequivocal statement of intent to allow such litigation to proceed . . ." it examined cases decided **before** the Tax Injunction Act (96 S. Ct. @1641 n. 13) granting the United States "capacity" to sue as trustee on behalf of the Indians for various federal rights given them and concluded the tribe could sue.

The United States was not a party in **Moe.** Its reasoning was based in part on the case of **Department of Employment v. United States**, 385 U.S. 355, 87 S. Ct. 464, 17 L Ed 2d 414 (1966) recognizing the theory of the federal instrumentality doctrine permitting the United

States to sue on behalf of the American Red Cross for unemployment taxes collected by the State of Colorado. **Moe** declined to base its decision on Title 28 U.S.C.A. §1343(3) (96 S. Ct. @1642 n. 14).

These theories may have their genesis in Title 28 U.S.C.A. §1345 granting federal courts jurisdiction over suits brought by the United States which has been interpreted to give such jurisdiction regardless of the subject matter of the controversy. **United States v. State of California**, 328 F. 2d 729 @ 734, lft. col., 1st full ¶ (CA 9, 1964). There are cases granting individual Indians the right to sue where the United States could have but did not, **Agua Caliente Band of Mission Indians v. County of Riverside**, 442 F. 2d 1184(CA 9 1971) @ 1186, but this has been somewhat denigrated in **Housing Auth. Etc. v.**

State of Washington, 629 F. 2d 1307 (CA 9 1980) where the court denied a federal instrumentality the right to sue a state over the state's disobedience to federal statutes providing for low income housing saying that although the government had a strong interest in low income housing ". . . it does not have the exclusive and compelling interest which attaches to its oversight of Indian affairs." (p. 1313).

Eleventh Amendment

In terms this amendment withdraws judicial power from the entire federal court system as to suits against states by citizens of other states or foreign countries. In terms it appears to merely repeal the state citizen diversity language of Article III. However, the amendment has been interpreted as being merely an example of sovereign immunity granted states,

the seminal decision for which may be **Hans v. Louisiana**, 134 U.S. 1, 10 S. Ct. 504, 33 L Ed 842 (1890), which McManus asks this court to overrule. The term "judicial power" has been interpreted to mean the amendment withdraws subject matter jurisdiction from federal courts over suits against states, especially where "retroactive relief" is sought which usually means extracting money from state treasuries. **Atascadero State Hospital v. Scanlon**, 473 U.S. 234, 105 S. Ct. 3142, 87 L Ed 2d 171 (1985).

However, there are exceptions to the bar of the amendment, which are that of "congressional abrogation," "waiver," and the "diversity theory." Congressional abrogation evidently says if a federal statute is clear enough authorizing suit against states then it will be permitted despite the amendment. Waiver evidently is usually

connected with viewing the amendment as providing an example of sovereign immunity which by some accounts may be waived. The diversity theory, not yet adopted by this court, says the amendment only affects the state citizen diversity subject matter jurisdiction of Article III permitting suit against states in federal court if a federal question is involved. See Brennan's dissent in **Atascadero**.

The constitutional authority for congressional abrogation seems to have begun with Section 5 of the Fourteenth Amendment giving Congress the power to "enforce" the substantive provisions of that article that are explicitly directed at the States. **Fitzpatrick v. Bitzer**, 427 U.S. 445 @ 456, 96 S. Ct. 2666 @ 2671 (rt. col. ¶ [1-3], 49 L. Ed. 2d 614 (1976).

The analogous "necessary and proper" clause of Article 1, Section 8, has also been thought to do the same thing. **Pennsylvania v. Union Gas Co.**, 109 S. Ct. 2273 (1989)

McManus believes his case at least comes within the congressional abrogation theory under Title 42 U.S.C.A. §2000d7(a)(1) because that statute eliminates a state's Eleventh Amendment immunity for violations of, among other statutes, " . . . **any other Federal statute prohibiting discrimination** . . . " As the Public Salary Tax Act, Title 4 U.S.C.A. §111, provides the United States consents to the taxation of its employees by states ". . . if the taxation does not **discriminate** against the . . . employee . . . " [emphasis added], then Iowa's immunity under the Eleventh Amendment has also been eliminated.

In **Pennsylvania v. Union Gas**, Justice Stevens points out the anomaly of the United States Supreme Court believing it capable of reviewing these cases despite "judicial power" being withdrawn from the entire spectrum of the federal system. 109 S. Ct. @ 2286-2289. This court has recently reviewed this issue again in **McKesson v. Division of Alcoholic Beverages, Etc. of Florida, et al.**, 110 S. Ct. 2238 (1990).

Another anomaly on the merits is that in **Davis v. Michigan** the taxpayer was denied prospective relief because federal courts couldn't order states to impose taxes (103 L. Ed 2d @ 907). He got a refund because Michigan conceded the point (103 L. Ed. 2d @ 906).

Here the State of Iowa argues the taxpayers should be denied retroactive relief and evidently also argue they should be denied prospective

relief as well either in state or federal court. If true, then although the taxpayers have been wrongfully taxed under the Public Salary Tax Act, they are given no relief whatsoever.

Comity

The inherent bias in our system of government against permitting suits against states in federal courts is so great that if neither the Eleventh Amendment nor the Tax Injunction Act prohibits the suits, then the decisional law will do so through the theory of comity. **Fair Assessment in Real Estate v. McNary,** 454 U.S. 100, 70 L Ed 2d 271, 102 S. Ct. 177 (1981). However, if the purpose of this extraordinary reluctance to permit suits against states in federal courts is to prevent undue interference with state affairs by the federal government, then it is another irony perpetuated by the law that the present suits

should be similarly prohibited because it is the **states** that have unduly interfered with federal affairs. It should be remembered the states have disobeyed a federal statute, the Public Salary Tax Act, and the disobedience doesn't affect citizens generally but it affects **federal employees only**. Thus, any decisional rule giving some deference to state autonomy should be even less of an impediment to this suit than would be the Eleventh Amendment and the Tax Injunction Act as argued above.

CONCLUSION

It is ironic that at common law (at least among subjects) injunctive relief was considered the extraordinary remedy and often conditioned on the inadequacy of the legal one (which usually meant money damages.) Between a subject and the sovereign, however, just the reverse is true -

the subject cannot get money damages, retroactive relief, as the courts think prospective injunctive relief sufficient. If the purpose of all these rules preventing suits in federal court against states is to accord great deference to the sovereignty of the states, then it is the ultimate irony the lower federal courts should be denied jurisdiction when the very basis of the suit here is the states have unduly interfered with the federal sovereign's enumerated powers of Article I, Section 8.

APPENDIX

The following trial court decision was issued June 14, 1990 by the Honorable Lyle R. Strom of Omaha, Nebraska sitting by designation:

This matter is before the Court on defendant's motion to dismiss (Filing No. 4).

Defendants filed their motion pursuant to Fed. R. Civ. P. 12(b)(1).

Plaintiff, E. J. McManus, filed his complaint as a class action seeking refunds for income taxes paid to the State of Iowa. In 1953, Iowa Code Ann. §97B.39 was enacted[1] which provided that retirement benefits paid to Iowa public employees shall "be exempt from taxation, either as income or as personal property."

On March 28, 1989, the United States Supreme Court, in *Davis v. Michigan*, 489 U.S. ____, 103 L. Ed. 2d 891 (1989), held that a Michigan statute violated 4 U.S.C. §111 by discriminating in the tax treatment between federal and state retirees in that it exempted the state retirees' income from state taxation but not

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[1] Acts 1953 (55 G.A.) Ch. 72§39.

that of the federal retirees.[2] In interpreting §111, the Supreme Court stated that its meaning is unmistakable. Specifically, it waives whatever immunity past or present federal employees would otherwise enjoy from state taxation of salaries, retirement benefits, and other forms of compensation paid on account of their employment with the federal government, except to the extent that such taxation discriminates on account of the source of the compensation. *Id.* at ____, 103 L. Ed. 2d at 901. The exception to the waiver of intergovernmental tax immunity contained in the final clause of §111 closely

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[2]The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.

parallels the nondiscrimination component of the constitutional immunity doctrine which bars taxes that discriminate against the government or those with whom it deals. *Id.* at ____. 103 L. Ed. 2d at 903. The Court held that, because Michigan's tax system discriminated in favor of retired state employees and against retired federal employees, an appropriate remedy was a mandate of equal treatment. *Id.* at ____. 103 L. Ed. 2d at 906. This result can be accomplished either by a withdrawal of benefits from the favored class or accomplished by extending benefits to the excluded class. *Id.*

In response to the *Davis* decision, the Iowa legislature amended § 97B.39 by deleting the language which had relieved state retirement benefits from taxation, either as income or as

personal property.[3] The amendment was passed on May 26, 1989, but is retroactive to tax years beginning on or after January 1, 1989.

Plaintiff filed his complaint seeking refund of state taxes paid for the tax years prior to January 1, 1989. The issue before the Court is whether jurisdiction exists to entertain plaintiff's cause of action in obtaining refund of taxes. Controlling here is the Tax Injunction Act, 28 U.S.C. 1341, which provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The United States Supreme Court stated that the Tax Injunction Act generally prohibits federal district courts from enjoining state tax

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[3]Amended by Acts 1989 (73 G.A.) ch. 228, §2.

administration except in instances where the state court remedy is not "plain, speedy and efficient." *See Rosewell v. LaSalle National Bank*, 450 U.S. 503, 512 (1981). It is the Court's duty to withhold relief when it appears that the state legislature has provided a procedure for a tax payer to recover a challenged tax payment, and where the tax payer may also assert constitutional claims. The proceeding must afford full protection to the taxpayer's federal rights. *Id.* The Tax Injunction Act has its roots in equity practice, principles of federalism, and in recognition of the imperative need of a state to administer its own fiscal operations. *Id* at 522. This last consideration was the principal motivating force behind the Act and is to limit drastically federal district court jurisdiction to interfere with so important a local concern as the

collection of taxes. *Id.* In addition, taxpayers are bound by the principle of comity from asserting §1983 actions against the validity of state tax systems in federal courts, provided the taxpayer may seek protection of federal rights by the state remedies and the state remedies are plain, adequate and complete. *See Fair Assessment in Real Estate Assoc. v. McNary*, 454 U.S. 100, 116 (1981).

Plaintiff filed a refund claim pursuant to Iowa Code Ann. 422.72(2) on April 15, 1989, seeking "refunds of state taxes paid on income that should not have been taxed pursuant to the *Davis* decision" (Plaintiff's complaint, Par. 18). If the Iowa Department of Revenue and Finance denies the refund claim, the plaintiff's remedy is to file a protest or appeal with the Department. *See* Iowa Code Ann. § 421.10 and § 422.28. The

plaintiff can pursue adverse decisions of the Director of Revenue and Finance in district court by filing a judicial review action pursuant to Iowa Code Ann. § 422.29. An appeal may be taken to the Iowa Supreme Court irrespective of the amount involved. See Iowa Code Ann. §422.29(3). The state remedies afford full hearings and judicial review at which the plaintiff may raise all legal arguments, including any constitutional objections. The plaintiff has failed to demonstrate that there are inadequate state remedies available. Thus, this Court is barred from entertaining plaintiff's cause of action. Plaintiff's assertion of a violation of 42 U.S. C. § 1983, does not cure this prohibition. *See Fair Assessment in Real Estate Assoc. vs. McNary*, 454 U.S. 100 (1981). Accordingly, the Court will grant defendant's motion to dismiss plaintiff's complaint. A

separate order in accordance with this memorandum opinion will be entered this date.

Dated this 12th day of June, 1990.

Pursuant to the memorandum opinion entered herein this date,

IT IS ORDERED that defendants' motion to dismiss (Filing No. 4) is granted; plaintiff's complaint is dismissed.,

DATED this 12th day of June, 1990.

April 3, 1991 the United States Court of Appeals for the Eighth Circuit issued the following decision:

PER CURIAM.

McManus appeals from the district court's[1] dismissal of his class action suit seeking refunds

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[1] The Honorable Lyle E. Strom, Chief Judge, United States District Court for the District of Nebraska, sitting by designation.

for income taxes paid to the state of Iowa. The district court based its dismissal on the grounds that because Iowa provides a plain, speedy, and efficient state court remedy, the Tax Injunction Act, 28 U.S.C. § 1341 (1988), barred McManus' suit. See Rosewell v. LaSalle Nat'l. Bank, 450 U.S. 503, 512 (1981). We believe that an opinion in this matter would have no precedential value and that the district court correctly dismissed the suit. Therefore, we affirm. See 8th Cir. R. 47B.

Statutes

§17A.19 of the Iowa Code provides in part:

> 1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter.
>
> . . .

> 3. If a party files an application . . . for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application . . . for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case.

§17A.2 of the Iowa Code provides in part:

> As used in this chapter:
>
> . . .
>
> 9. "*Agency action*" includes the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so."

§422.73(2) of the Iowa Code provides in part:

> If it appears that an amount of tax . . . has been paid which was not due under division II [on income taxes] . . . of this chapter, then . . . that amount shall be refunded to the person . . .

§422.28 provides in part:

> A taxpayer may appeal to the director for revision of the tax, interest or penalties assessed at any time within sixty days from the date of the notice of the assessment of tax, additional tax, interest or penalties. The director shall grant a hearing and if, upon the hearing, the director determines that the tax, interest or penalties are excessive or incorrect, the director shall revise them according to the law . . .

§422.29 provides in part:

> 1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa Administrative Procedure Act.
>
> . . .
>
> 2. The petitioner shall file with the clerk a bond for the use of the respondent, with sureties approved

> respondent, with sureties approved by such clerk, in penalty at least double the amount of tax appealed from . . .

§421.10 of the Iowa Code provides:

> The appeal period for revision of assessment of tax, interest, and penalties set out under section. . . 422.28, . . . applies to appeals to notices from the department denying changes in filing methods, denying refund claims, and denying portions of refund claims for the tax covered by that section.

IAC[Iowa Administrative Code] §701-7.8(17A) provides:

> Protests. Any person wishing to contest an assessment, refund claim, or any other department action, . . . shall file a protest, in writing, with the department . . . to the director for a hearing. . . .

DAVID P. McMANUS
GLASSON, GROVE, SOLE & McMANUS
118 Third Avenue SE, Suite 206
Cedar Rapids, IA 52401
(319) 366-4313